



AllDigital Brevity – End User License Agreement

This End User License Agreement (the “Agreement”, “EULA”) in conjunction with the Service Order governs Customer’s use of AllDigital’s proprietary software (the “AllDigital Brevity Software”) and AllDigital Rental Hardware, including (i) appliances and (ii) servers, rented to and operated by Customer in connection with AllDigital’s high-speed data transportation and cloud services (collectively, with the AllDigital Brevity Software, the “AllDigital Service”).

ALLDIGITAL BREVITY SOFTWARE

(i) **Grant of License.** Subject to the terms of this Agreement, AllDigital hereby grants to Customer and its Authorized End Users a non-exclusive, non-transferable, non-sublicensable, revocable (as stated below) license to use the AllDigital Brevity Software solely in conjunction with the AllDigital Service and in accordance with all specified system requirements. “Authorized End Users” means Customer Employees and/or representatives that are using the AllDigital Brevity Software for Customer’s internal business purposes.

(ii) **Restrictions.** Customer may not, and may not permit or assist others to: (i) rent, lease, sell, sublicense, loan, time-share, publicly display or perform or otherwise transfer or distribute the AllDigital Brevity Software; (ii) decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code of the AllDigital Brevity Software; (iii) modify, translate, adapt, create derivative works of, merge, or translate the AllDigital Brevity Software; (iv) use the AllDigital Brevity Software on a “service bureau” or other basis whereby third parties are provided access to or use of the AllDigital Brevity Software in return for compensation without prior written consent from AllDigital or (v) remove, alter or obscure AllDigital’s proprietary notices affixed to or contained in the AllDigital Brevity Software.

(iii) **User ID’s Access Records.** Authorized End Users shall receive a unique user identification (“User ID”) and password that will enable access and use of the AllDigital Service, either from AllDigital or a Customer-designated administrator. Authorized End Users may only access and use the AllDigital Service through the User ID and password provided. Customer must ensure that each Authorized End User shall maintain the confidentiality of his or her User ID and password. Customer shall promptly notify AllDigital of any actual or suspected unauthorized use of the AllDigital Brevity Software and shall be responsible for all activity occurring under the User ID’s issued to its Authorized End Users. All access logs will be considered Customer confidential information.

(iv) **AllDigital Brevity Software Modifications.** Upon notice to Customer, and provided the nature and level of service provided is not diminished, AllDigital may modify or replace the AllDigital Brevity Software from time to time, in whole or in part, without incurring any liability to Customer, and without any change to any of Customer’s payment or other obligations. Should AllDigital provide Customer with any modifications, upgrades, updates, and enhancements to or of the AllDigital Brevity Software, any and all such modifications, upgrades, updates, and enhancements shall be deemed “AllDigital Brevity Software” under this Agreement and subject to the terms and conditions set forth herein.

(v) **Copyright.** The AllDigital Brevity Software is owned by AllDigital and is protected by United States copyright laws and international treaty provisions. AllDigital hereby reserves all copyright, trademark, patent, trade secret and other intellectual property rights in and to the AllDigital Brevity Software not expressly granted herein. The AllDigital Brevity Software is licensed and not sold.

RENTAL HARDWARE

Rental Hardware (“Equipment”), including all appliances and/or servers deployed in the Customer’s business to deliver AllDigital Services, is owned by AllDigital and rented to Customer under the following terms and conditions:

(i) **Equipment.** Equipment rented to Customer is listed on Exhibit A - Equipment Checklist (“Checklist”), which is part of the Purchase Order. Customer acknowledges that they have examined the Equipment and that it is in good condition except as otherwise specified on the Checklist. Equipment includes original packaging.

(ii) **Use.** Customer intends to use Equipment in its business and will maintain Equipment at the address on the Purchase Order. Equipment may only be used in a careful and proper manner and may not be used in any way that is inconsistent with operating manuals available on the Internet. Customer is responsible for all costs associated with using the equipment.

(iii) **Deposit.** AllDigital may require a deposit, which it will charge to a debit or credit card on file, for an amount equal to one (1) month of service to secure a deposit against the Rental Hardware. The deposit will be credited to Customer on equipment return, net of the cost for return shipment and any loss or damage beyond normal wear and tear. If a deposit is not secured, AllDigital will prepare a final invoice on termination (“Termination Invoice”) that includes the cost for return shipment and any loss or damage beyond normal wear and tear, and Customer is responsible for paying the Termination Invoice according to the terms Purchase Order terms.

(iv) **Taxes/Fees.** Customer is responsible for paying AllDigital fees, including applicable taxes, invoiced monthly. Customer is responsible for paying all other applicable taxes not invoiced by AllDigital.

(v) **Repairs.** Equipment that fails at no fault of Customer will be either repaired or replaced at AllDigital’s expense and option. Customer may not service or repair equipment or replace parts without AllDigital’s prior consent.

(vi) **Insurance.** Customer must carry insurance satisfactory to AllDigital equal to the value of the Equipment to ensure its full replacement, unless agreed otherwise in writing by AllDigital.

(vii) **Restrictions on use.** Customer may not (a) Permit the Equipment to be used by any person who is not authorized to use such Equipment; (b) Operate or use the Equipment or permit it to be operated or used in violation of law; (c) Operate or use the Equipment or permit it to be operated or used to commit a violation of law; (d) Operate, use, maintain or store the Equipment in a manner likely to cause damage to the Equipment.

(viii) **Loss or Damage.** Customer is responsible for keeping Equipment in good condition at all times and may incur other fees due to equipment loss, customer damage, diminution of value caused by customer damage or necessary repairs, failure to return the equipment, missing equipment, and costs to enforce these fees, including administrative fees for processing any claims and legal expenses. Customer will immediately notify AllDigital of loss or any damage to the Equipment.

(ix) **Return of Equipment.** Equipment will be returned in the same condition as received on the Equipment Checklist, except for normal wear and tear. Customer will secure and seal Equipment in the original packaging and contact AllDigital for prepaid shipping label that it will adhere to the original packaging and deliver to the Common Carrier for shipment.

(x) **Indemnification and Liability.** Customer will indemnify, defend and hold harmless AllDigital from and against any claim, demand, cause of action, loss or liability (including attorney’s fees and expenses of litigation) for any property damage or personal injury arising from Customer’s use of Equipment by any cause, except to the extent caused by AllDigital’s gross negligence or willful misconduct. The provisions of this Article survive the termination of this Agreement with respect to any claims or liability accruing before such termination. IN NO EVENT WILL ALLDIGITAL BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGES ARISING FROM CUSTOMER’S USE OF EQUIPMENT, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS AND LOSS OF REVENUE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

(xi) **Ownership.** AllDigital will at all times retain ownership and title to the Equipment. Customer will immediately notify AllDigital in the event Equipment is levied, has a lien attached or is threatened with seizure. Customer will indemnify and hold AllDigital harmless against all loss and damages caused by such action. Equipment will be deemed at all times to be personal property, whether or not it may be attached to any other property.

(xii) **Waiver.** No failure of AllDigital to exercise or enforce any of its rights under this Agreement will act as a waiver of subsequent breaches; and the waiver of any breach will not act as a waiver of subsequent breaches. AllDigital’s acceptance of payment with knowledge of a default by Customer will not constitute a waiver of any breach.

(xiii) **Severability.** In the event any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be unenforceable, that provision will be enforced to the maximum extent permissible under applicable law, and the other provisions of this Agreement will remain in full force and effect. Customer and AllDigital further agree that in the event such provision is an essential part of this agreement, they will begin negotiations for a suitable replacement.

(xiv) **Assignment.** Customer may not, without the prior written consent of AllDigital, transfer or assign this Agreement or any part thereof. Any attempt to do so will be a material default of this Agreement and will be void.

1. Term and Termination. Notwithstanding the following, the term of this agreement is stated in the Purchase Order, and the Purchase Order will automatically renew for a consecutive term equal in length to the expiring term provided that Customer does not notify AllDigital in writing at least sixty (60) days in advance of expiration. This Agreement and Customer’s rights hereunder, including all rights to the AllDigital Brevity Software and Rental Hardware, will immediately terminate without notice to Customer if Customer breaches the sections above entitled “Grant of License” or “Restrictions.” In addition, either party may terminate this Agreement upon a material breach of this agreement by the other by giving ten (10) days prior written notice of termination, stating the cause therefore, with termination becoming effective at the close of the said 10th day if the breach is not then cured. Customer shall have the right to terminate this agreement effective any time if any programming error or other defect or malfunction significantly affects use of the AllDigital Brevity Software or AllDigital Service and, in the event that after ten (10) days written notice from Customer of the error or defect, AllDigital fails to resolve the problem to Customer’s reasonable satisfaction. In the event Customer terminates this Agreement pursuant to this Paragraph 1 and without limiting any of Customer’s other rights and remedies, AllDigital shall refund any part of the license fee paid by Customer relating to services not yet rendered. Upon termination, Customer must immediately cease use of the AllDigital Services and return all Rental Hardware. The sections of this Agreement entitled “Disclaimer of Warranties,” “Limitation of Liability,” “Indemnity,” “Export Restrictions” and “Miscellaneous” will survive any termination of this Agreement.

2. DISCLAIMER OF WARRANTIES. THE DISCLAIMER IN THIS PARAGRAPH 2 IS SUBJECT TO SUCH EXCEPTIONS AS ARE OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT AND PURCHASE ORDER. THE SERVICE IS LICENSED TO CUSTOMER “AS IS.” TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALLDIGITAL AND ITS SUPPLIERS AND LICENSORS, AS APPLICABLE, DISCLAIM ALL WARRANTIES AS TO THE SERVICE, EITHER EXPRESS OR IMPLIED, INCLUDING BUT



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NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. NEITHER ALLDIGITAL NOR ITS SUPPLIERS NOR LICENSORS, AS APPLICABLE, WARRANT THAT THE SERVICE OR THE USE THEREOF WILL BE ACCURATE, COMPLETE, UNINTERRUPTED OR ERROR FREE, OR THAT ANY INFORMATION, SOFTWARE OR OTHER MATERIALS ACCESSIBLE FROM OR RELATED TO THE SOFTWARE ARE OR WILL BE FREE OF VIRUSES, WORMS, OR OTHER HARMFUL CONTENT. CUSTOMER WILL NOT HOLD ALLDIGITAL LIABLE FOR, AND AGREES TO ASSUME ALL RESPONSIBILITY FOR, ANY FAILURE OF THE SERVICE TO ACHIEVE CUSTOMER'S INTENDED RESULTS, OR FOR ANY DAMAGE THAT RESULTS FROM CUSTOMER'S DOWNLOADING, REPRODUCING, INSTALLING OR USING THE SOFTWARE, INCLUDING WITHOUT LIMITATION ANY DAMAGE TO CUSTOMER'S COMPUTERS, NETWORK OR SYSTEMS. ALLDIGITAL'S SUPPLIERS AND LICENSORS ARE INTENDED THIRD-PARTY BENEFICIARIES OF THIS DISCLAIMER OF WARRANTIES. SOME STATES RESTRICT DISCLAIMERS OF IMPLIED WARRANTIES, SO THIS DISCLAIMER MAY NOT FULLY APPLY TO CUSTOMER.

3. LIMITATION OF LIABILITY. IN NO EVENT SHALL ALLDIGITAL OR ANY OF ITS SUPPLIERS OR LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS, LOST REVENUES, LOSS OF USE OR INTERRUPTION OF BUSINESS), OR FOR LEGAL FEES, ARISING OUT OF THE USE OF THE SERVICE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF ALLDIGITAL OR ITS SUPPLIERS OR LICENSORS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL ALLDIGITAL'S AGGREGATE LIABILITY FOR ANY CLAIM EXCEED THE SUBSCRIPTION FEES PAID FOR THE ALLDIGITAL BREVITY SERVICE BY CUSTOMER IN THE TWELVE (12) MONTHS PRECEDING THE DATE OF ACCRUAL OF ANY CLAIM FOR THE ALLDIGITAL BREVITY SOFTWARE. THE PARTIES AGREE THAT THIS LIMITATION ON DAMAGES REPRESENTS A REASONABLE ALLOCATION OF RISK. ALLDIGITAL'S SUPPLIERS AND/OR LICENSORS, IF ANY, ARE INTENDED THIRD-PARTY BENEFICIARIES OF THIS LIMITATION ON DAMAGES. SOME STATES RESTRICT LIMITATIONS ON DAMAGES, SO THIS LIMITATION MAY NOT FULLY APPLY TO CUSTOMER.

4. Indemnity.

4.1 Customer agrees to defend, indemnify and hold harmless AllDigital and its directors, officers, employees, agents, representatives, licensors, suppliers, service providers, affiliates, demands, causes of action and other proceedings (collectively "Claims") arising out of or relating to: (i) Customer's use of the AllDigital Service other than as permitted hereunder; or (ii) Customer's breach of this Agreement.

4.2 AllDigital agrees to defend, indemnify and hold harmless Customer and its directors, officers, employees, agents, representatives, licensors, suppliers, service providers, affiliates, parents, subsidiaries and other contractors from and against any Claims arising out of or relating to (i) any allegations that the Customer's use of the AllDigital Service as authorized hereunder infringes upon any U.S. patent, copyright, trademark, or any other similar right; or (ii) AllDigital's breach of this Agreement.

4.3 Each party will have the right to participate through counsel of its choice in any defense and claim to which it is entitled to indemnification hereunder. An indemnifying party may not settle any Claim without the prior written consent of the indemnified party to the extent such settlement requires an admission of liability, payment, or ongoing obligation of the indemnified party. An indemnified party must promptly notify the indemnifying party of any Claim that is subject to indemnification.

5. Export Restrictions. Customer may not download, export, or re-export the AllDigital Brevity Software: (i) into, or to a national or resident of, any country to which the United States has embargoed goods; or (ii) to anyone on the United States Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. By downloading, installing or using the AllDigital Brevity Software, Customer is representing and warranting that Customer is not located in, under the control of, or a national or resident of, any such country or on any such list.

6. Third Parties. Should Customer, in conjunction with this Agreement, provide a third party with the AllDigital Service (a "Third Party Customer"), such Third Party Customer will be subject to the terms of this Agreement, including Sections 3 and 4.

7. Service. AllDigital will retain all right, title, and interest in and to the AllDigital Service. End User shall return all AllDigital Brevity Software and Equipment, if applicable, in good working order (normal wear and tear excepted) to AllDigital promptly upon expiration or termination of this Agreement.

8. Fees. Customer shall pay AllDigital fees as provided in the Customer's purchase order for the AllDigital Service.

9. Support Services. During the term of this Agreement, AllDigital agrees to furnish technical support to the Customer per the purchase order.

10. Joint Marketing. AllDigital may use Customer's name in a listing of new, representative or continuing customers in press releases, on its website, or in other marketing materials or dissemination of information. The Parties may agree to cooperate in joint marketing activities or in issuing a joint press release at the request of either Party, subject to prior written consent and approval of the form and substance by both Parties.

11. Governing Law. This Agreement shall be governed by and construed in

accordance with the laws of the State of California without giving effect to any choice of law or conflict of law provision or rule that would cause the application of the laws of any other jurisdiction. All disputes arising under this Agreement shall be brought in the state and federal courts located in Orange County, California. Each Party consents to exclusive personal jurisdiction in such courts.

12. Miscellaneous. This End User License Agreement may be found at the following URL: <http://alldigital.com/legal/EULA-AllDigitalBrevity>. The Acceptable Use Policy may be found at the following URL: <http://alldigital.com/legal/acceptable-use-policy>.

Should AllDigital make changes to either of these Agreements, Customer may not be notified and is therefore encouraged to check these URL's periodically for any updates. The Agreement as posted on the website represent the latest version of the Agreements between Customer and AllDigital and supersede all previous versions.